

**Filed 9/15/16 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2016 ND 186

State of North Dakota,

Plaintiff and Appellant

v.

Jayden Rae Washburn,

Defendant and Appellee

No. 20140154

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable Bruce B. Haskell, Judge. Disposition upon remand from the United States Supreme Court.

REMANDED.

Per Curiam.

Burleigh County State's Attorney's Office, 514 East Thayer Avenue, Bismarck, N.D. 58501, for plaintiff and appellant.

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Attorney General's Office, 600 East Boulevard Avenue, Bismarck, N.D. 58505, for amicus curiae North Dakota Attorney General.

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State v. Washburn

No. 20140154

Per Curiam.

[¶1] Jayden Rae Washburn was arrested for driving under the influence and refused to submit to a warrantless chemical breath test. The State charged Washburn with refusing to submit to a chemical test in violation of N.D.C.C. § 39-08-01(1)(e). The district court dismissed the prosecution, concluding the State could not constitutionally criminalize a driver's exercise of the right to refuse to submit to a warrantless chemical test.

[¶2] In State v. Washburn, 2015 ND 8, 861 N.W.2d 173, we summarily reversed the dismissal in light of State v. Birchfield, 2015 ND 6, 858 N.W.2d 302.

[¶3] In Birchfield v. North Dakota, 136 S.Ct. 2160, 2184-85 (2016), the United States Supreme Court held the Fourth Amendment permits warrantless breath tests incident to a lawful arrest for drunk driving, but absent another exception to the warrant requirement, does not permit warrantless blood tests incident to a lawful arrest for drunk driving. The United States Supreme Court concluded that in Birchfield's prosecution for refusing a warrantless blood test incident to his arrest, the refused blood test was not justified as a search incident to his arrest and reversed his conviction because he was threatened with an unlawful search. Id. at 2186.

[¶4] The United States Supreme Court granted Washburn's petition for writ of certiorari and remanded to this Court for consideration in light of Birchfield v. North Dakota. We vacate our opinion reversing the dismissal of the charge against Washburn to the extent it is inconsistent with Birchfield v. North Dakota. We remand

to the district court for any further proceedings as may be deemed necessary.

[¶5] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Dale V. Sandstrom
Daniel J. Crothers
Lisa Fair McEvers

